

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HAFEES ALSTON,)	
Plaintiff,)	
)	C.A. No. 22-183 Erie
)	
v.)	
)	District Judge Susan Paradise Baxter
GEORGE LITTLE, et al.,)	Magistrate Judge Richard A. Lanzillo
Defendants.)	

MEMORANDUM ORDER

Plaintiff Hafees Alston, an inmate formerly incarcerated at the State Correctional Institution at Forest in Marienville, Pennsylvania (“SCI-Forest”),¹ initiated this *pro se* civil rights action on June 17, 2022, against the following ten individuals who are employees of the Pennsylvania Department of Corrections (“DOC”) and/or medical personnel who provide medical services to inmates at SCI-Forest: DOC Secretary George Little (“Little”); Superintendent Derrick B. Oberlander (“Oberlander”); Nurse Practitioners Leslie (“Leslie”) and Sutherland (“Sutherland”); Chief Healthcare Administrator Kim Smith (“K. Smith”); Registered Nurse Jana Smith (“J. Smith”); “Chief Grievance Approver” T. Biel (“Biel”); Keri Moore (“Moore”); Chief Grievance Coordinator D. Varner (“Varner”)’ and Health Services Administrator Lisa Lamoreaux (“Lamoreaux”). (For ease of reference, Defendants Leslie, Sutherland, and Lamoreaux are hereafter collectively referred to as “Medical Defendants,” and the remaining Defendants are collectively referred to as “DOC Defendants”). The case was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the

¹
Plaintiff is currently incarcerated at the State Correctional Institution at Frackville, Pennsylvania.

Local Rules for Magistrates.

Plaintiff asserts that Defendants violated his Eighth Amendment rights by acting with deliberate indifference to his serious knee injury and related medical needs, and by subjecting him to unconstitutional conditions of confinement. In addition, Plaintiff asserts state law claims of false imprisonment and medical malpractice against each Defendant. Both the Medical Defendants and the DOC Defendants filed motions to dismiss the complaint [ECF Nos. 13, 23]. Both motions were fully briefed by the parties.

On May 15, 2023, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation ("R&R") recommending that the Medical Defendants' motion to dismiss [ECF No. 13] be granted in part and denied in part, and that the DOC Defendants' motion to dismiss [ECF No. 23] be granted. [ECF No. 41]. In particular, Judge Lanzillo recommends that: (1) Plaintiff's Eighth Amendment deliberate indifferent claims be dismissed with prejudice as to all Defendants other than Defendants Sutherland and Leslie, and that such claim against these two Defendants be allowed to proceed only to the extent it is based on their alleged denial of a lower bunk assignment; (2) Plaintiff's Eighth Amendment conditions of confinement claim be dismissed without prejudice and with leave to file an amended complaint to provide further allegations in support of such claim; (3) Plaintiff's state law medical malpractice claim be dismissed without prejudice against the Medical Defendants for failure to file a certificate of merit under Rule 1042.3 of the Pennsylvania Rules of Civil Procedure, and be dismissed with prejudice against all other Defendants; and (4) Plaintiff's false imprisonment claims be dismissed with prejudice.

Plaintiff filed timely objections to the R&R on May 30, 2023; however, the objections

merely consist of a summary argument in support of his deliberate indifference claims and an explanation for his failure to provide a certificate of merit in support of his medical malpractice claim [ECF No. 43]. Neither of these “objections” raises any cognizable ground for overturning the Magistrate Judge’s findings.

Thus, after *de novo* review of the complaint and documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 14th day of August, 2023,

IT IS HEREBY ORDERED that the Medical Defendants’ motion to dismiss [ECF No. 13] be GRANTED IN PART and DENIED IN PART, and that the DOC Defendants’ motion to dismiss [ECF No. 23] be GRANTED, as follows:

- (1) Plaintiff’s Eighth Amendment deliberate indifferent claims are DISMISSED WITH PREJUDICE as to all Defendants other than Defendants Sutherland and Leslie, and that such claim against these two Defendants be allowed to proceed only to the extent it is based on their alleged denial of a lower bunk assignment;
- (2) Plaintiff’s Eighth Amendment conditions of confinement claim is DISMISSED WITHOUT PREJUDICE. Plaintiff is granted leave to file an amended complaint within thirty (30) days from the date of this Order to provide further allegations in support of such claim. In the event Plaintiff fails to file an amended complaint within such time, Plaintiff’s Eighth Amendment conditions of confinement claim will be dismissed with prejudice, without further notice;
- (3) Plaintiff’s state law medical malpractice claim is DISMISSED WITHOUT PREJUDICE against the Medical Defendants for failure to file a certificate of merit under Rule 1042.3 of the Pennsylvania Rules of Civil Procedure, and is DISMISSED WITH PREJUDICE against all other Defendants; and
- (4) Plaintiff’s false imprisonment claims is DISMISSED WITH PREJUDICE.

The report and recommendation of Magistrate Judge Lanzillo, issued May 15, 2023 [ECF No.

41], is adopted as the opinion of the court.

A handwritten signature in cursive script, reading "Susan Paradise Baxter".

SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
U.S. Magistrate Judge